



NATIONAL CENTER FOR TOBACCO-FREE KIDS

Statement of Matthew Myers

President

Campaign for Tobacco-Free Kids

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Good morning Mr. Chairman, and members of the Committee. My name is Matthew Myers. I am the President of the National Center for Tobacco-Free Kids, a national organization created to protect children from tobacco by raising awareness that tobacco use is a pediatric disease, by changing public policies to limit the marketing and sales of tobacco to children, and by actively countering the special interest influence of the tobacco industry.

Mr. Chairman, I want to thank you for your continued leadership on the issue of tobacco control. Many others and I are very grateful for your willingness to stand up for our kids and take on the tobacco companies. During the past year you have been attacked by allies of the tobacco companies, but you have not backed down, and today's hearing is further evidence of your commitment to protecting our children and reducing the death toll of tobacco.

I also want to thank Senator Hollings for his leadership, particularly his recent efforts to ensure that the Department of Justice is able to move forward with its lawsuit against the tobacco companies. I also want to again express our desire to continue to work with Senator Hollings on efforts to assist tobacco farmers. I believe we can simultaneously protect the public health and help family farmers and their communities reduce their economic dependence on tobacco production. For years, the cigarette companies have tried to blame the plight of the American tobacco farmer on public health initiatives and declining smoking rates. But it has become increasingly clear that the primary cause has been the decisions of the cigarette companies. The tobacco companies have chosen to maximize their profits by relying on less-expensive foreign labor and cheap foreign-grown tobacco while sacrificing the economic well being of the American tobacco farmer.

My testimony today will focus on a few key points:

- 1) A report being released today by the Campaign for Tobacco-Free Kids, the American Heart Association, the American Cancer Society, and the American Lung Association demonstrates that too often states are not living up to their promise to spend the tobacco settlement money to reduce tobacco use.
- 2) The need for comprehensive, effective prevention programs has never been greater because tobacco company promotional expenditures that affect children continue to rise. The Master Settlement Agreement has eliminated or reduced some types of advertising and promotions, but the evidence shows that the tobacco companies are continuing the marketing practices that have the greatest impact on our children.
- 3) And finally, we believe the federal government must show leadership on the issue of tobacco. State and local efforts will not be enough. There are a

number of positive steps Congress can take in the next session to reduce tobacco use and there are a number of issues that are of immediate concern to us and others in the public health community. For example:

- The next Congress should grant the Food and Drug Administration (FDA) the authority to regulate tobacco products just as FDA regulates other products consumed by Americans.
- Language in a number of appropriations bills designed to block the Department of Justice lawsuit against the tobacco companies should be rejected. This Congress should adopt the Hollings amendment to provide funding for the lawsuit and reject special legal protections for the tobacco companies
- The Foreign Sales Corporation legislation that recently passed the House should be amended to end the current tax subsidy of tobacco company exports.

State spending on tobacco prevention and cessation

The states' tobacco settlement, known as the Master Settlement Agreement (MSA), presented the states with a unique opportunity to reduce the terrible burden exacted by tobacco on America's families and communities.

We have issued regular reports tracking whether and to what extent the states are living up to their original promise to use a significant portion of the settlement funds to attack the enormous public health problem posed by tobacco in the United States. Virtually every state legislature has now had the opportunity to make at least an initial decision about how to spend the billions of dollars that they are receiving from the tobacco companies.

Our latest report shows that too often the states are not living up to their promise to spend the settlement money to reduce the death toll from tobacco. Fifteen states have made substantial commitments to fund tobacco prevention and cessation, but of those states, only five met the minimum funding levels recommended by the U.S. Centers for Disease Control and Prevention (CDC) for effective programs. Eleven additional states committed only modest amounts to new tobacco prevention and cessation programs (less than one-half the minimum amount recommended by the CDC). Fourteen states have committed minimal amounts to tobacco prevention and cessation (less than 25% of the minimum amount recommended by the CDC). Three states committed none of the settlement money to tobacco prevention. One of these, California, currently has a comprehensive tobacco prevention program funded by state cigarette excise taxes, but two have no existing tobacco prevention program. One state placed its funds into a trust fund that would permit, but not require any of the funds to be used for tobacco-related purposes, and six states have not yet acted at all. Finally, of the four states that had comprehensive programs prior to the

MSA, only one has used funds from the settlement to enhance its tobacco prevention efforts.

The tobacco settlement has resulted in an increase in the amount of money being spent at the state level on tobacco prevention and cessation, but the numbers are woefully short of what the CDC has concluded represents the absolute minimum necessary to fund a truly effective, sustained comprehensive program.

The new funding levels for tobacco prevention only sound large in comparison to the amount states have traditionally spent on tobacco prevention. When the public health problems posed by tobacco are compared to other health problems, it is clear that the amount the states are spending on tobacco prevention today pales in comparison to the magnitude of the problem, as well as to the amount spent by the tobacco companies to promote the problem.

It is not enough to claim, as some will undoubtedly do, that more of the money in many states is to be spent on other “health” programs. These cases were brought to reduce the death toll from tobacco. There is no single public health action that will save more lives than a dramatic reduction in the number of people who die from tobacco use. By investing in tobacco prevention now, states will save money in the long term, and see their health care costs decline along with tobacco consumption. And in all states, the investment in tobacco prevention can be made while still leaving the majority of the settlement funds available for other worthy causes.

Comprehensive Prevention Programs Work

The states’ failure to fund tobacco prevention is tragic because the evidence is now conclusive that comprehensive state programs work. As others have pointed out, including the Institute of Medicine in its March, 2000 report entitled “State Programs Can Reduce Tobacco Use”, and the Surgeon General in his August, 2000 report, entitled “Reducing Tobacco Use,” we know how to reduce tobacco use and the harm it causes. The Surgeon General found that our country could make unprecedented progress and reduce tobacco use by 50% in one decade through implementation of currently used comprehensive prevention and cessation programs. These reports make clear that state funds spent on tobacco prevention and cessation are not experiments or learning opportunities. To the contrary, they are proven strategies that will produce important results for the health of our country.

The Surgeon General’s prediction is grounded in experience. In the six states with comprehensive tobacco prevention programs (California, Massachusetts, Oregon, Arizona, Florida and Mississippi), the results have been impressive. For example, in Florida smoking was reduced by 40% among middle school students and 18% among high school students in less than two years. Between 1996 and 1999, smoking among high school students in Massachusetts decreased by 16

percent. Since 1988, tobacco consumption in California has declined by 50%, compared to 30% for the country as a whole.

Need for effective programs never greater -- continued industry marketing and targeting of our kids

Two years after the state settlement, the tobacco companies are spending more marketing their products than the states are spending on tobacco prevention and cessation. According to the most recent official report of tobacco industry spending by the Federal Trade Commission, in 1998 the tobacco manufacturers spent \$6.7 billion, or more than \$15.5 million each day, to promote their products. In contrast to the \$6.7 billion in annual tobacco industry marketing expenditures, the National Conference on State Legislatures estimates that in FY 2000 and FY 2001, the legislatures appropriated a total of approximately \$168 million and \$430 million, respectively, of the tobacco settlement money for tobacco prevention and cessation out of a total of more than \$8 billion they received.

The need has never been greater. Even if fully enforced the MSA impacts less than 20% of cigarette marketing. Tobacco company promotional expenditures that affect children actually increased in the year after the state settlement. Recent studies show that tobacco advertising in magazines read by significant numbers of children, like Sports Illustrated and Rolling Stone, has increased by 33% since the MSA (see attachments). And one of these studies found that tobacco advertising in magazines reaches a huge majority of kids with alarming frequency and that this reach has increased dramatically since the settlement for several brands. The study found that eight of the top ten cigarettes brands each reached at least 70 percent of 12 to 17 year olds five or more times with magazine advertising in all of 1999. Marlboro, Kool and Winston each reached at least 89 percent of youth with that frequency in 1999.

Shortly after these studies were released Philip Morris announced that it would suspend advertising in magazines with more than a 15% youth readership. However, this action was taken only after they were caught red-handed and publicly chastised. Other companies continue to advertise in magazines with a significant youth readership and of course Philip Morris could reverse its decision.

Similarly, advertising in convenience stores, which three of four teens visit once a week, has jumped substantially since the MSA (see attachment). These studies and other direct evidence provide proof that the claims of Philip Morris and the other tobacco companies that they have changed are not born out by the facts.

It is also important to note that this continued advertising aimed at kids violates both the MSA and the tobacco companies' own publicly stated policies on advertising. The MSA prohibits the tobacco companies from taking any action,

directly or indirectly, to target youth. Brown and Williamson Tobacco Co. has stated publicly that its policy is to not advertise in publications with more than 15 percent youth readership, yet it has refused to cease advertising in such publications. Neither self-regulation nor the MSA has proved effective at stopping the tobacco companies from targeting kids. That is why we need for the states to invest in comprehensive tobacco prevention programs and for the Congress to grant the FDA the authority to regulate tobacco.

It should not surprise us that the industry continues its marketing to kids, as well as its double talk and its efforts to evade, circumvent and subvert restrictions imposed upon it. The tobacco industry loses 2 million smokers every year to death or quitting, and it must replace them in order to stay profitable. Virtually no one becomes a smoker after age 18. Almost 90 percent of regular smokers began at or before age 18.

And their marketing works. Kids are susceptible and receptive to marketing. Studies show that kids are up to 3 times as sensitive as adults to cigarette advertising. Almost 90% of all adult smokers begin smoking when they are 18 or younger. Sixty percent of kid smokers smoke the most heavily advertised brand – Marlboro. Eighty-six percent of kid smokers choose the 3 most heavily advertised brands, while only one-third of adult smokers do. And we see the effects of tobacco company targeting of ethnic populations when over 80 percent of African American high school seniors who smoke choose Newport.

Continued industry double talk on basic issues of health

As you can see, despite the settlement of the suit by the states Attorneys-General almost two years ago, despite the specific promises as part of that settlement not “to target youth,” despite all the public promises since that time not to market cigarettes in magazines with youth readership, despite a multi-million dollar public relations campaign to convince the public that tobacco companies are responsible corporate citizens, the plain truth is that the industry has continued its historic pattern of misdeeds, bad acts, double talk and deadly deception.

I want to address specifically Philip Morris’ multi-million dollar TV ad campaign touting the MSA and their philanthropic efforts in the community as evidence of change. As the examples of continued marketing to kids show, this public relations campaign is aimed at creating an illusion of change, and blocking meaningful government action at the federal and state levels to protect our kids and reduce the disease and death caused by tobacco. Unlike some of the other tobacco companies, Philip Morris can’t even bring itself to make a clear admission that tobacco is addictive and leads to disease and death.

Despite publicly acknowledging on its website that “there is overwhelming medical and scientific consensus that cigarette smoking cause lung cancer, heart disease, emphysema and other serious diseases...” Philip Morris, in papers filed

with a federal court in New York in November of 1999, stated “it has not been scientifically established whether cigarette smoking causes any of these diseases in humans...”

Despite publicly acknowledging on its website that “Cigarette smoking is addictive, as that term is most commonly used today,” Philip Morris, in papers once again filed with the federal court in New York in November 1999, stated that nicotine in cigarettes is not ‘addictive’ under objective, scientifically verifiable pharmacological criteria used to define that term.”

In sworn testimony for the Engle tobacco trial in Florida, Philip Morris CEO Michael Szymanczyk states: “The company’s position is that there is an overwhelming scientific and medical consensus that smoking causes lung cancer and disease.” When asked if Philip Morris ever agreed with that consensus, Szymanczyk states: “We have not.”

Does this sound like a reformed industry? I don’t think so.

The need for Federal action to reduce the toll of tobacco

There is much that state and local governments can do to reduce tobacco use, particularly among our children. But the federal government should also take action and provide leadership on this nationwide problem.

FDA Jurisdiction over Tobacco Products

Perhaps most importantly, Congress should pass legislation giving the Food and Drug Administration (FDA) authority over tobacco products. The Supreme Court in its ruling this year on FDA authority called tobacco the nation’s most significant public health threat, particularly for children and adolescents, and made clear that the obligation to protect our kids from tobacco falls squarely on Congress.

Real FDA authority must include oversight of the sale, marketing and manufacture of tobacco products. The MSA impacted only 20% of cigarette marketing, and FDA should be given the authority necessary to stop tobacco marketing to children. The tobacco companies have proven, time and again, that they will exploit every loophole they can find to continue targeting kids for addiction. They will not be stopped until Congress gives the FDA strong, enforceable authority to regulate tobacco.

Unlike the manufacturer of any other product consumed by Americans, tobacco companies continue to escape even the most basic oversight for health and safety. Tobacco companies are not required to test additives for safety purposes, inform consumers what is in their products or take any action to make their deadly products less harmful or less addictive.

The lack of government regulation or oversight of the tobacco industry leaves American consumers uninformed and at risk. For example, just yesterday a new study was released showing that R.J. Reynolds' new Eclipse cigarettes expose smokers to greater amounts of several cancer-causing chemicals compared to two "ultralight" cigarette brands already on the market. The study casts doubt on RJR's claims that Eclipse "may present smokers with less risk of cancer" and other tobacco-related diseases. When RJR announced the test marketing of Eclipse in April, the company claimed that smoking Eclipse produces 80 percent less carcinogens than a "typical ultralight." Without FDA regulatory authority to verify health claims, RJR can continue to make claims, and American consumers will end up being human guinea pigs. Past experience with so-called 'reduced-risk' products show that they turn out to be marketing frauds aimed at getting more people to start and continue a lethal habit.

Explicitly granting the FDA authority over tobacco products would not subject the tobacco industry or its products to more intensive governmental scrutiny than other industries or products. It would simply apply to tobacco products the same kind of regulatory oversight that already applies to all other legal, and far less harmful, products consumed by Americans. Even Macaroni and Cheese, another Philip Morris product, is more regulated than tobacco. The time for Congressional action granting FDA the authority over tobacco is decades past-due.

Reject special legal protections for the tobacco companies

Tobacco industry supporters in Congress have tried this year to attach a never-ending array of misguided amendments to a host of appropriations bills in an effort to derail the Department of Justice lawsuit against the tobacco companies. Congress should adopt the amendment offered by Senator Hollings during Committee consideration of the Commerce-Justice-State appropriations bill to provide DOJ with the funding needed to pursue the lawsuit. Just last week, a U.S. District judge ruled that the lawsuit may proceed under U.S. racketeering statutes, repudiating claims that the suit had no merit. The United States Senate should take immediate action to assure funding for the lawsuit so that the American people have their day in court.

Foreign Sales Corporation Repeal and Extraterritorial Income Expansion Act

The House of Representatives recently passed the Foreign Sales Corporation Repeal and Extraterritorial Income Expansion Act. This legislation would continue special tax benefits of more than \$100 million a year for the tobacco industry. These enormous tax breaks are nothing other than a subsidy, at American taxpayer expense, for the tobacco industry to export death and disease abroad. Numerous products already are excluded from this legislation for public policy reasons. Tobacco companies should also be excluded and should not receive a tax break.

As smoking rates decline in the West, U.S. tobacco companies are aggressively recruiting smokers in developing nations. The World Bank estimates that between 80,000 to 100,000 children become addicted to cigarettes every day worldwide. Already, tobacco use kills about four million people every year. Based on current trends, the World Health Organization predicts that tobacco will kill ten million people per year by 2030, with 70 percent of those deaths occurring in developing countries. The government of the United States should work to prevent this public health catastrophe, not to promote it. We urge that this gift to the tobacco companies be debated fully in the Senate. There should be an up-or-down vote.

Mr. Chairman, thank you for the opportunity to testify today. I sometimes worry that legislators believe we solved the problem of tobacco and children with the MSA. Nothing could be further from the truth. Much more work needs to be done at the local, state, and federal level. I look forward to continuing to work with you and other members of this Committee to take advantage of the many opportunities for Congress to protect our children from tobacco.